

Vol. 14, No. 8

September, 1961

CHURCH & STATE

A MONTHLY REVIEW

Federal Aid Dead This Year?
Supreme Court and Birth Control
Peace Corps Goes Sectarian
Christian Brothers Pay Liquor Tax
Rockefeller in Trouble
Christian Mathematics?



All the Big Ones

When POAU began its work fourteen years ago there was little interest in church-state questions. Churches usually ignored such matters and there was no concern by secular groups. How different today with church-state issues regularly making the headlines!

Many Protestant churches now have commissions devoted to church-state considerations. The National Council of Churches has a Religious Liberty Department. The National Association of Evangelicals has a commission which deals in depth with these matters. There are top-level interdenominational study committees; there are hard-working intra-denominational study groups.

In the courts the volume and variety of church-state litigation has increased by many times. Legislatures are regularly tangling with legislation that has church-state repercussions. This is also true of Congress.

We do not claim to print *all* of this in CHURCH AND STATE, but we do say that you will find all the significant church-state stories here. You will also find many of the little stories which, because of their unusual circumstances, have special interest. If you doubt this, you should read some of the "I wouldn't be without it" letters which have come to the editor following the appearance of our new REVIEW.

We are thankful to you who wrote and wish we could print all your wonderful letters here. We are also grateful to others who may wish to join our rapidly increasing readership across the nation.

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POAU
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Washington 6, D. C.

FALL MEETINGS

Many public meetings for the discussion of Church-State issues are being scheduled by POAU and other groups for this Fall. Federal aid for church schools, parochial school bus transportation and sectarian hospital practices will be of top interest.

The traditional Reformation Week—October 22 to 29—will be the back-drop for scores of city-wide services; POAU staff speakers will appear in a number of these rallies.

Staff speakers who still have a few open dates for the October-December period are: Executive Director Glenn L. Archer; CHURCH AND STATE Editor C. Stanley Lowell; Director of Organization John C. Mayne; Director of Church Relations Herbert S. Southgate and Special Counsel Edward P. Felker.

Area Directors of Los Angeles, Chicago and New York also are available, as are certain Board officials. Write to the POAU Department of Organization to arrange for a speaker.

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Federal School Appears Dead This Year But Revival Seems Possible

Late in July it appeared that all Federal aid to education programs, with the exception of aid to impacted areas, were dead so far as the current Congress is concerned. The bills were killed by an 8 to 7 vote in the House Rules Committee, then killed again by a motion which makes it impossible to bring them up again there this year. The leadership of the Roman Catholic Church was generally credited with the defeat of school aid. Catholic bishops had insisted on inclusion of their denominational schools in any school aid program.



Rep. John W. McCormack, Majority Leader of the House of Representatives, who has labored hard for parochial school tax funds in the 87th Congress.



Rep. James J. Delaney, member of the House Rules Committee, who cast the deciding vote to kill all school aid bills.

Hatchet men were identified as Rep. John W. McCormack (D., Mass.) and Rep. James J. Delaney (D., N. Y.). Both men are known to their colleagues in Congress as "professional Catholics" because of their devotion to the interests of their church.

The Knight Commander

Rep. McCormack has repeatedly used his powers as Majority Leader of the House for the benefit of his church. He has been personally responsible for the passage of legislation which has bestowed many millions of dollars of public funds on institutions of the Roman Catholic Church. He is known among Congressmen by the nickname of "the archbishop." For his fidelity to Catholic interests in Congress the Pope has awarded honors to Rep. McCormack—such as Knight Commander of St. Gregory the Great, and member of the Order of Malta, First Class.

Working in close collaboration with Rep. McCormack and the Catholic Welfare Conference was Rep.

James J. Delaney, a product of parochial schools, who represents a New York district with a heavy Catholic population. Rep. Delaney was placed on the Rules Committee as a "liberal" who was supposed to give President Kennedy a majority in that group and assure smooth access to the House floor of administration bills. When the showdown came, Rep. Delaney, the friend of Cardinal Spellman, voted "No." His vote was decisive in providing an 8 to 7 majority which killed public school aid. The others who voted "No" are just opposed to all Federal aid on principle.

Mr. Delaney boasted of his action and declared that the tabling of the school aid bills would "clear the atmosphere." This was taken to mean that Catholic pressures had demonstrated no school aid could pass which did not include Catholic schools.

Others Not Subservient

Rep. Thomas P. O'Neill (D., Mass.) another Catholic member of the Rules Committee, participated in the early stages of the church's pressure policy. But when the bishops' ultimatum was met by the Catholic loan provision in the Defense Education Act, Mr. O'Neill did vote to bring out both bills. It was Rep. Delaney who thereupon upped the Catholic demands in a way that others on the committee found completely unreasonable. He insisted on the re-drafting of all the bills into one which would include the Catholic aid. That killed all the bills.

Rep. Ray J. Madden (D., Ind.) a third Roman Catholic, put public interest ahead of sectarian demands and voted consistently to bring the school aid bill to the floor.

There are possible ways by which school aid might yet be brought to the floor of the House. It could be done by petition signed by 219 members to force the bill out—an exceedingly unlikely prospect. It could be done by a straight two-thirds vote of the House. It could be done by "calendar Wednesday" procedure. Under this, an alphabetical call can be ordered under which chairmen of committees can present their bills even though they have not received a "rule." The trouble with this is that all such items must be disposed of by adjournment the same day. An extended discussion automatically kills any such effort.

Aid to impacted areas appeared certain to get through Congress in some way and there was to be an attempt to tie some other forms of aid to it. But the general program appeared dead—thanks to the clerical conspiracy.

● Editorials ●

Clerical Blackmail

It appears that Federal aid to education, with the exception of aid to "impacted areas," may be dead for this year. It was killed, as our story elsewhere shows, by the vote of a Roman Catholic member of the House Rules Committee, Rep. James J. Delaney, who insisted that Catholic schools be included in the school aid program. He joined seven other members who are conscientiously opposed to all Federal aid, thus providing an 8 to 7 majority against all the aid bills.

House Majority Leader, Rep. John W. McCormack, worked closely with Mr. Delaney in assuring the debacle.

POAU took no stand in regard to Federal aid as such. We confess to indignation, however, that the bishops of the Roman Catholic Church can wield veto power over important legislation in the way they obviously did. As Rev. Dean Kelly of the Religious Liberty Department of the National Council of Churches commented: "The Catholic tactic is out in the open, and nobody can disguise why this bill hung up."

Justification Needed

When the bishops' position was first disclosed to Senator Wayne Morse he called it "a political hold up," and later described it as "a great mistake." The words are strong, but "clerical blackmail" still seems to us the most apt designation of these tactics.

Catholic leaders were put in the worst possible light when, despite acceptance of their demands for loans to build parochial school classrooms, they persisted in killing the public school bill. It thus appeared to the public that the bishops were more concerned with preferred status for their institutions than for the country's school children.

The *New York Times* angrily editorialized:

"It was bad enough to demand the ransom that the proponents of parochial school aid demand as the price of release of the public school bill, but it is worse to obtain the ransom and then fail to carry through the deal."

We will be interested to observe what public relations techniques this church will conceive to justify its political pressures so arrogantly exerted on the 87th Congress.

What of the Leader?

When the Catholic bishops injected themselves into the school aid battle the spotlight was thrown on the Catholic President, John F. Kennedy. How would he react?

In the early going the President acquitted himself well. He held out against Cardinal Spellman's demand that Catholic school aid be included in the administration bill. This was not done.

But when Catholic pressures began to mount, Presidential determination seemed to decline. *The Washington Post*, the *New York Times* and other prominent papers besought the President to exercise his leadership. POAU urged a strong stand by the President in resistance to clerical pressures on the Congress. Instead, there was protracted silence.

At the height of the 1960 campaign Mr. Kennedy proclaimed his credo as follows: "I believe in an America where the separation of church and state is absolute—where no church or church school is granted any public funds." A legal memorandum prepared for the President held that general grant or loan programs for construction of church schools would be unconstitutional. (CHURCH AND STATE, June 1961, p. 12).

Art of Evasion

But the proposed "special pur-

pose" construction loans of \$375 millions to private schools in an amendment to the National Defense Education Act invited compromise and evasion, partly because they could be described simply as an extension of equipment and materials loans in the previous legislation. A new memorandum appeared from the elastic Health, Education and Welfare attorneys which declared that parochial school construction loans for special purpose classrooms were constitutional. A curious document to come from lawyers, this "legal memorandum" had no legal citations and appeared to be little more than a propaganda sheet from Secretary Ribicoff.

Once in Office . . .

Finally, on July 19, President Kennedy made his too-long delayed statement. Asked whether he thought the NDEA, the so-called "Catholic bill," should be included as part of the school aid package, he replied: "Whether (the parochial school loans) are in public policy or not, and whether that would affect the final passage, would be a judgment we would reach. They are not unconstitutional because they do not go across the board in a way which in my opinion is clearly unconstitutional."

Some felt that the President was sounding a different note from that of his campaign speeches. The insistence that church schools must be kept out of the general school bill had been fundamental to his whole school aid policy from the first. Now he was plainly wavering. Millions of Americans, opposed to any use of Federal funds for Catholic schools, regardless of labels or technical distinctions, watched the President's struggle of conscience.

President Kennedy certainly had not done so, but he seemed to be preparing the way for a compromise with Catholic power which would sell out church-state separation.

How and When

In his majority opinion upholding the constitutionality of Sunday laws, Chief Justice Earl Warren made the candid admission that the laws were religious in their original character. We find him less convincing when he argues that "wholly apart from their original purposes or connotations," such laws now have "a secular rather than a religious character, and that presently they bear no relationship to establishment of religion. . . ."

It has always seemed to us that Sunday laws do stand in popular thinking for the principle of a prescribed day of worship. So Justice Douglas observed in his across-the-board dissent. "(God's) service," he said, "will not be motivated by coercive measures of government. . . ."

We realize that our own constituency is divided on this matter. We should like to suggest, however, that what really disturbs us about the decision on Sunday laws is this: if government can prescribe *when* people are to worship, can it also prescribe *how* they are to worship?

A Bright Spot

There is however, at least one bright spot in the decision. The Supreme Court did reiterate the interpretation of the First Amendment laid down in *Everson* (1947) and *McCormack* (1948) which barred public financial aid to religion under the First Amendment. Only three Justices who participated in those decisions are now on the court—Black, Frankfurter and Douglas. By re-affirming this interpretation the six new justices indicate that the court continues unanimous in the view that the First Amendment bars "laws which aid one religion, aid all religions, or prefer one religion over another."

Papal Encyclical to be Analyzed

In the longest encyclical letter addressed to the faithful in the history of the Roman Catholic Church, Pope John XXIII released to the world on July 14th a general discussion of aid to backward areas, farming, labor, science, taxation and birth control. Choosing the 70th anniversary of Leo XIII's 1891 encyclical, "The Condition of

Labor," Pope John chose to make his new encyclical the third letter in a series of which the second was Pius XI's 1931 pronouncement "Reconstructing the Social Order." (The changing political point of view in these three encyclicals will be analyzed in detail in next month's CHURCH AND STATE REVIEW by Paul Blanshard.)

"If They Go for This, How Much Shall We Make 'Em Pay Next Time?"

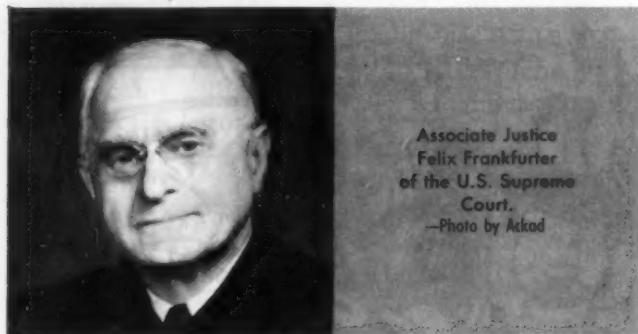


Herblock, in Washington Post

Supreme Court Fails to Rule On Merits of Birth Control Law

The anti-birth control law of Connecticut scored a technical 5 to 4 victory in the United States Supreme Court in June but came through so badly battered that few experts expect it to survive another Supreme Court test. Not a single justice actually committed himself to the constitutionality of the present law, and three justices indicated doubt as to its constitutionality. The prevailing decision was based wholly on alleged defects in the method chosen to challenge the law.

Dr. C. Lee Buxton, eminent gynecologist of Yale, and two women identified simply as Mrs. Poe and Mrs. Doe brought the case against Connecticut's law to the Supreme Court, with Professor Fowler Harper of Yale as their attorney. The law, they said, deprived them of due process, equal protection and human freedom under the Constitution because it made even the private use of contraceptives in the intimacies of married life a crime. No other state in the Union, they pointed out, goes that far.



The Fact Situation

Mrs. Poe had three consecutive pregnancies terminating in the birth of abnormal children who died. Mrs. Doe, in her last pregnancy, remained unconscious two weeks and will die if the experience is repeated. Although Dr. Buxton, Mrs. Poe and Mrs. Doe had not actually been prosecuted for crime, they asked for a declaratory judgment outlawing the Connecticut statute as unconstitutional so they could give and receive contraceptive material without becoming criminals.

In effect, the Supreme Court said that the method chosen to challenge the old law was premature and that the court would decide the constitutional question only when the state took the law seriously enough to prosecute some citizens directly for violation. Justice Frankfurter, who wrote the prevailing opinion, was bitterly sarcastic concerning the Connecticut authorities who had prosecuted only one case since 1879 in

the face of "ubiquitous, open, public sales" of contraceptives. He spoke of the "unreality" of the lawsuit and suggested that the Supreme Court should not be called upon to pronounce a merely "abstract opinion upon the constitutionality of a state law." This purely technical view was sustained also by Chief Justice Warren and three other justices, with four justices in disagreement. Justice Brennan, the only Catholic jurist on the bench, was non-committal concerning the merits of the bill but agreed that a less abstract test was necessary.

Connecticut's birth control law has been kept on the statute books for many years because Catholic-dominated city political machines have been able to control one house of the Connecticut legislature and because Catholic bishops have openly directed their people to oppose repeal of the law. The state now has a Catholic percentage of 51.5%. Under Catholic moral law all use of contraceptives is sinful even under the circumstances described by Mrs. Poe and Mrs. Doe.

Harlan Dissent

Justice John Marshall Harlan of New York delivered a powerful 34-page dissenting opinion declaring that "the intimacy of husband and wife is necessarily an essential and accepted feature of the institution of marriage, an institution which the State not only must allow, but which always and in every age it has fostered and protected." He condemned any State which "undertakes to regulate by means of the criminal law the details of that intimacy."

Justice William O. Douglas went even farther in challenging the Connecticut law and said:

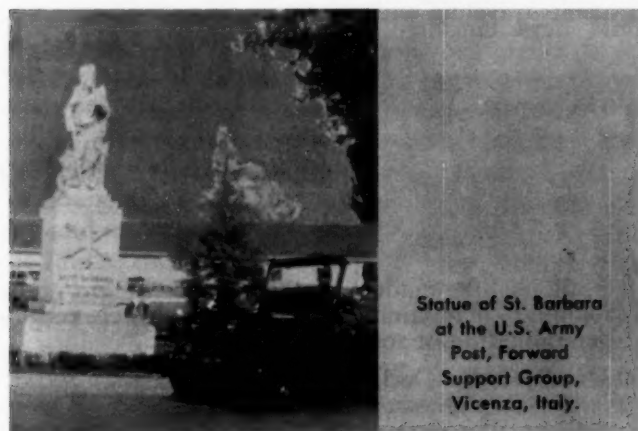
Can there be any doubt that a Bill of Rights that in time of peace bars soldiers from being quartered in a home "without the consent of the owner" should also bar the police from investigating the intimacies of the marriage relation? The idea of allowing the State that leeway is congenial only to a totalitarian regime. I dissent from a dismissal of these cases and our refusal to strike down this law.

The planned parenthood movement of Connecticut promptly announced that it would open birth control clinics and challenge the antiquated Connecticut law with openly "criminal" activity. Only two states in the Union, Connecticut and Massachusetts, now follow Catholic principles in their birth control statutes, and even in these states public authorities make only nominal attempts to enforce the unpopular laws.

Peace Corps Raises Church-State Issue

Fears that the Peace Corps might turn out to be another church promotion program were heightened with the announcement that half of the original project were to be directed by missionary groups. The National Catholic Welfare Conference welcomed the Peace Corps with open arms. It promptly set up an agency at its national headquarters through which all Catholic participation would be channeled.

The NCWC distributed a "Fact Sheet" designed to recruit Catholics for service. Diocesan papers announced that ten Catholic missionary groups would cooperate in providing Peace Corps volunteers. Head of the NCWC agency, Dr. F. Robert Melina, was ecstatic over the Peace Corps which the Vatican Radio described as "beautiful" and "magnificent."



Statue of St. Barbara
at the U.S. Army
Post, Forward
Support Group,
Vicenza, Italy.

Dr. Melina denied that Catholic participation would be limited to Roman Catholics. He said that "a good Protestant" would be accepted for Catholic projects, "but we are certainly not going to take a non-believer." When pressed as to whether Catholic projects would be used to promote that church, Dr. Melina replied: "If we spent all our lives looking for ironclad guarantees, we'd never move."

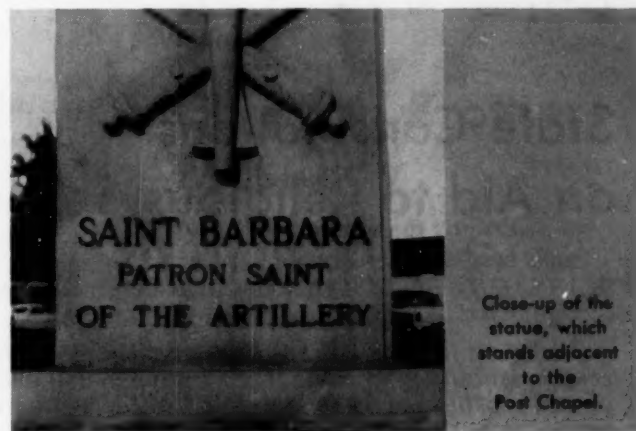
The Case of Colombia

One of the first Peace Corps projects is the construction of schools in rural communities of Colombia. Protestant missionaries there were quick to point out that in recent years Colombia police had closed more than 200 Protestant schools in rural communities. They asked out loud why these schools could not be re-opened instead of sending volunteers down to build others. They also asked whether the new schools could be turned over to Roman Catholic teaching orders.

The Colombian project also inspired a letter to R. Sargent Shriver, Jr., director of the Peace Corps, from C. Stanley Lowell, associate director of POAU. Noting Mr. Shriver's insistence that the Peace Corps will

not "do business with countries which discriminate against racial or religious groups," Mr. Lowell inquired as to how a project could be planned for Colombia. "If you study the record," he wrote to Mr. Shriver, "you will discover that our State Department has repeatedly had to intervene with Colombian authorities on behalf of American Protestants who have suffered all manner of abuse and discrimination because of their religion in Colombia."

A good barometer of what the Peace Corps would encounter in Colombia was supplied by a high official of that country who was quoted in *Time* (June 16) as saying frankly: "The most important question for a North American going into the backlands is: 'Are you a Roman Catholic?' In our rural society the village



Close-up of the
statue, which
stands adjacent
to the
Post Chapel.

priest commands both the body and the soul of the peasants. I'm afraid for non-Catholics, however noble the U.S.'s purpose."

Officials of the National Council of Churches were cautious in their response to the Peace Corps, but did indicate that they would set up a Peace Corps desk. Dr. Jan S. F. Van Hoogstraten, Church World Service official, suggested that the Corps might be more effective if its personnel were to operate under an international agency. The United Presbyterian Church, U.S.A., through its Commission on Ecumenical Mission and Relations, opposed any Presbyterian contracts with the Peace Corps. The American Jewish Congress expressed "vigorous opposition" to participation by religious group in Peace Corps projects overseas.

Negative Press Reaction

The secular press also had reservations. The *New York Times* (July 3) pointed out the difficulties which inhere in the no-proselytism rule promulgated by Director Shriver for cooperating churches. The *Times* declared that the issue of separation of church and state was involved. "This is not merely an academic mat-

ter," it asserted. "It means that no tax-paying citizen shall be obligated to support or otherwise endorse an enterprise with which he is not wholly in sympathy."

The *Christian Science Monitor* (June 21) insisted that Director Shriver's distinction "between proselytizing and non-proselytizing missionary projects does not stand up under close scrutiny." The editorial warned that "the United States Government is not, for the most basic constitutional reasons, supposed to be in the business of furthering any religion from funds provided by all the American people."

Doubts were continuing to mount in the minds of church leaders. Dr. James A. Robinson, a Presbyterian minister who directs "Crossroads Africa," declared that the Peace Corps should sign no contracts whatever with religious groups. "It will lead the Peace Corps into some very unfortunate and unhappy decisions," he said.

State Constitutions on Aid to Religious Schools

MASSACHUSETTS—Articles of Amendment Sec. 148: Art. XLVI.

"Religious freedom—Expenditure of public money for center institutions prohibited—Exceptions.—(In place of and substitution for article XVIII of the articles of amendment of the constitution.) Article XVIII, Section I. No law shall be passed prohibiting the free exercise of religion.

Sec. 2. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the Commonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the Commonwealth or Federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town, and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public

credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society."

None of this seemed to disturb the director, R. Sargent Shriver, Jr., who apparently felt that simple affirmations by project leaders were sufficient to solve all problems. He denied that any funds would be given for church proselytizing programs and said that the agencies involved would be required to disavow any such aims before they could participate. He told a press conference that attorneys from the Justice Department had assured him there would be no violation of church-state separation in the plans of the corps to subsidize the welfare projects of missionary groups.

A warning as to what participating churches might expect was sounded in far-off Tanganyika. A Tanganyikan African nationalist leader, F. E. Omidio, called Peace Corpsmen "spies for NATO" and urged that they be barred from Tanganyika as "subversive agents traveling under the guise of technicians."

credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society."

MICHIGAN—Declaration of Rights (art. 2). Sec. 3:

*"Freedom of worship—Disabilities.—" * * * No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purpose. * * **

MINNESOTA—School Funds, Education and Science (art. 8), Sec. 3:

*" * * * Prohibition as to aiding sectarian school.—But in no case shall the moneys derived as aforesaid, or any portion thereof, or any public moneys or property, be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.*

Annotation.—The last paragraph is intended to prevent school moneys from being appropriated for denominational schools and to prevent the teaching of the distinctive doctrines of any sect or creed in the public schools maintained by the State. *Kaplan v. Independent School Dist. of Virginia*, 1927, 171 Minn. 142, 214 N.W. 18, 57 A.L.R. 185."

MISSISSIPPI—Education (art. 8). Sec. 208:

"No religious or other sect or sects shall ever control any part of the school or other educational funds of this State; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school."

(To be continued in October issue)

THIS MONTH

Life Does It Again

Complaints are rampant that LIFE magazine has become a religiously prejudiced publication. Following an editorial (March 17) which took the straight Catholic line on parochial school subsidies, the magazine has published (June 16) a Catholic propaganda piece by Robert Coughlan. Mr. Coughlan writes on the Catholic assumption that there must, of course, be a religiously segregated school system for all Catholics. Then he goes on to argue that Catholics are incapable of financing such a system privately and must, therefore, have public funds. He tries to create an aura of inevitability for Catholic subsidies, arguing that there are now so many Catholic schools that the government will just have to do something for them.

One example of the patent prejudice in Mr. Coughlan's piece is his argument that the state laws against public subsidies to churches were the product of anti-Catholic prejudice! There is no truth in this at all. State laws were simply state implementations of the First Amendment.

The Coughlan article makes it clear that the editorial department of LIFE has unequivocally taken the Roman Catholic position on school subsidies. One Protestant leader has remarked: "The charge of prejudice against Protestants and others can only be squared when Mr. Luce consents to print a piece giving the other side of this business."

Unfortunately, this is just what Mr. Luce has thus far refused to do.

Noisy Priest

Another author of campus disruption has made public print in Ohio. He is Father John Olliver, advisor to the Roman Catholic Newman Club on the campus of Bowling Green State University. Joining a company of tampering clerics (See CHURCH AND STATE, July, 1961 and Oct., 1958) Fr. Olliver was charged with persistently undermining academic freedom at the University. He was accused by faculty members, alumni, and students of urging

Dogma Makes Strange Bed Fellows

The most forceful opposition to artificial birth control in our half of the planet comes from the Roman Catholic Church. Population explosion is what mass misery is, and, if President Kennedy really is serious about relieving it, it means a break—on that subject at least—with his own church. (He's differed sharply with some of the hierarchy on other issues—aid to parochial schools and the appointment of a minister to the Vatican). But many are guilty, in addition to the church, in this matter. The press itself has dragged one foot in covering this—either the biggest or the second biggest story of our time—partly because of clerical opposition. . . .

—John Crosby in *The New York Herald Tribune*—Jan. 25, 1961

Catholic students not to take certain courses and ordering them not to read assigned books of which he disapproved.

Fr. Olliver was further charged with exerting undue influence upon the school's President, Dr. Ralph W. McDonald. It was specifically alleged that Fr. Olliver had a hand

in the ouster of Philosophy Professor Sherman W. Stanage, an ordained Methodist minister, whom he sought to replace with a Catholic. Official reason: Dr. Stanage had failed to develop "an outstanding program in religion."

A faculty-student alumni group carried its protest to the Ohio Senate Education Committee. Governor Mike DiSalle refused to see the group. The subsequent resignation of President McDonald was expected to clear the air. There was no word regarding the future of Fr. Olliver.

Christian Brothers Must Pay

As this issue went to press news came of a decision in Federal Court, Sacramento, California requiring the Christian Brothers order to pay up Federal taxes on its liquor operations. The sum immediately involved runs close to \$2 million, but additional millions were at stake. Christian Brothers had sued the government to recover \$490,000 in corporate profits taxes on the ground that these church-operated distilleries were not subject to such taxes since the property involved belonged to the Pope. The government countersued for the full amount in back taxes—some \$1,351,193.

Now the court has found for the Government, holding, in effect, that the Christian Brothers is not a church under section 11 of the Internal Revenue Code. This means that Christian Brothers will subsequently have to pay the Federal tax on its vast liquor profits.

The decision represents a substantial victory for POAU which first brought the matter to public attention. A full account of the decision will appear in the October issue.

NEWS FROM FAR AND NEAR

■ Protestants seeking to celebrate the 70th anniversary of the commencement of their work in Costa Rica, had their permit for a parade cancelled by President Mario Echandi. The President was sustained in the Supreme Court by a 16 to 0 vote. The Protestant parade was banned because of pressure exerted by the Roman Catholic hierarchy.

■ Roman Catholic Bishop Edward E. Swannstrom of New York, executive director of Catholic World Relief Services pleads for the channeling of foreign aid directly to private and church groups abroad. "It seems to me," he said "that by neglecting the private sector overseas we are missing one of our greatest opportunities. . . ."

■ Ouster of Senator Mario E. Davila, a member of the Christian Action Party (Roman Catholic) from the Puerto Rican Senate was voted 25 to 2. He was the only senator to be elected by the Catholic party. A committee reported that his election "resulted from fraud and compulsion of the Puerto Rican electorate by the hierarchy of the Catholic Church." Similar action for similar reasons was taken in the case of Rep. Jose L. Feliu Pesquera, only member of that party to be elected to the House. The vote was 49 to 0. Undaunted, Bishop James E. McManus continued to attack the Popular Democratic Party. "At election time," he said, "it is time to demand the right to respect (for) religion."

■ The Jerusalem Church of Christ has been closed at least temporarily following mob action against the church by stone-throwing fanatics. Similar animosity has been exhibited against other Christian groups which make converts among Jews. Pastor Ralph T. Henley announced discontinuance of services "until such time as the police department gives us definite assurances of the safety of the worshippers." Assurances were promptly given by Israeli officials that the Church of Christ would be given adequate police protection.

■ A Protestant youth organization—Juventude Evangelica Portuguesa—formed 30 years ago to provide young people in Lisbon with educational and cultural activities, has been ordered disbanded by the Portuguese Government. Portugal's State Church is Roman Catholic.

■ After some centuries of painful experiences with Roman Catholic orders, the Swedish Government forbade the establishment of convents following the Reformation. In 1952 the Religious Freedom Act was passed by parliament, and the Government has now officially sanctioned a convent for nuns of the Carmelite Order, the first Catholic convent in Sweden since the Reformation.

■ Anti-Catholic laws in Great Britain may be on the way out if an action of the Liberal party in Surrey gains support. Local members at Guilford there have urged repeal of laws which presently forbid a Catholic to become king or to be regent or to hold the post of Lord Chancellor of the House of Lords.

■ Federal aid to Roman Catholic schools in the Miami area was demanded by Msgr. John F. McCarthy of the National Catholic Welfare Conference. He declared that the aid was needed to educate Cuban refugees in Catholic schools. He complained that aid was going only to public schools that were educating the refugees.

Rockefeller In Trouble

When Governor Rockefeller first proposed his \$200 per head "student incentive" plan for students in New York's private colleges, he assured everyone that there was no violation of the state's constitution. Reason: the money would go to the student, not to the institution.

As soon as the measure became law, the colleges promptly raised their tuition by the \$200, thus assuring themselves of the extra money. But even the pleasant fiction of making the student the conduit to the college was to be denied Governor Rockefeller. The Board of Regents, an independent agency not under the governor's control, was composed of practical men. They could not see the extra book work involved in paying the money first to the student, then his having to pay it to the college. Why not just pay it to the college and be done with it?

That is what they did, being practical men. Governor Rockefeller, to whom the indirect nature of the subsidy was politically important, professed to be "surprised and disturbed. This is not just bookkeeping," he said. "There's a principle involved."

The governor got little sympathy from Paul Duling, New York regional director of POAU who remarked: "Giving this tax gift to religious institutions—and not to students—was the original purpose of the plan. We commend the Board of Regents for being candid about the whole idea."

The scholarship requirements for the incentive award as worked out by the regents appeared to be little more than an ability to get admitted to a college and to make passing grades. A number of New York groups are interested in the constitutional problem posed by the grants to church institutions and exploring possibilities for a court test of the new law.



Paul Blanshard Says

The State and the Rights Of Individual Conscience

On June 19, 1961, at about 1:00 PM Eastern Daylight Time, the Inquisition came to an end in the United States. The fundamental principle of the right of individual conscience against a clerical state, asserted by most Protestants and endorsed by most Americans of all faiths, was sustained by the United States Supreme Court. Like most melodramatic statements, this is an oversimplification. On June 19th the Supreme Court by unanimous decision declared, in the case of *Roy R. Torcaso vs Clayton Watkins*, that the State of Maryland had no right to compel a man to believe in God as a required condition for receiving a license as a notary public.

What the Supreme Court Meant

But some people cannot get an idea through their heads in 700 years. David Lawrence, for example. This noted columnist who has become in recent years the chief non-Catholic American advocate of public appropriations for parochial schools, wrote up the Torcaso decision as if it constituted a victory for atheism which "ought to make the Communists in Russia very happy." Actually, the Torcaso decision stood for freedom of thought, and freedom of thought is equally anathema in all totalitarian regimes; in Communist Russia as well as Catholic Spain.

The real question in the Torcaso case had nothing to do with his personal religion. I have met Mr. Torcaso several times but I do not know what his religion is. When he originally came into POAU's office for a legal consultation, and received encouragement from all of us, nobody asked him what his religion was. He was an American who believed in religious freedom and the separation of church and state.

Mr. Torcaso hired a D.C. attorney, Joseph A. Sickles, for his Maryland hearings, and two distinguished lawyers, Leo Pfeffer and Lawrence Speiser, argued his case gratis in the United States Supreme Court. Mr. Sickles, a Catholic, commented: "I feel that constitutionally the state has no right to inquire into a person's religious views."

So far as I know, there are no atheists on the United States Supreme Court. One Catholic justice, one Jewish justice, and seven Protestant justices unanimously agreed that Torcaso was right and Maryland was wrong. The opinion of the Court was written by Baptist Hugo Black.

Justice Black in his opinion flatly repudiated the of-

fending section in the Constitution of Maryland because: "The power and authority of the State of Maryland thus is put on the side of one particular sort of believers." The most important paragraph in the unanimous decision reads:

We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

This is not a declaration of unbelief but a magnificent reaffirmation of (1) religious freedom as an American, legal absolute value; and (2) the separation of church and state.

Separation Strengthened

Most American newspapers failed to comment on that part of the Torcaso decision which is most important for POAU. The Court's decision outlawed religious tests for public office under the First and Fourteenth amendments (not under Article VI of the Constitution, as some journalists said) and henceforth such tests can be considered an unlawful establishment of religion, an impairment of the free exercise of religion, and the denial of equal protection under our laws.



But, for POAU members, the striking fact about this unanimous Torcaso decision is that it reaffirms the best parts of all the recent decisions defending the wall of separation between church and state. There was no wiggling and wobbling in the language of the Supreme Court in defending that wall. The decision, coupled with the Court's refusal on May 14th to review Vermont's denial of public money to Catholic high schools, puts POAU in the strongest legal position it has ever occupied in respect to Catholic power and the current drive on the public treasury.

For nine years, many Jesuit, and some Protestant, lawyers have been arguing that the most famous sentence of the Supreme Court in the *Everson* bus case in 1947 saying that: "No tax in any amount, large or small, can be levied to support any religious activities or institutions," was mere dicta, not binding as final

law on lower courts because the Court in that same decision also allowed public grants as welfare payments for parochial school buses. Now, Justice Black, speaking for a unanimous Court, has specifically destroyed that canard.

Quoting the above, and other, famous sentences, Justice Black said "we were urged to repudiate as dicta" these sentiments. "We declined to do this. . . ." Justice Black not only repeated the famous paragraph from the *Everson* bus case repudiating tax support for religion and ending with the endorsement of Jefferson's "wall of separation between Church and State," but he also quoted Justice Frankfurter's famous paragraph from his separate assent in the 1948 *McCollum* religious education case, which I have always believed should be a basic part of every POAU member's faith:

We are all agreed that the First and Fourteenth amendments have a secular reach far more penetrating in the conduct of government than merely to forbid an "established church" . . . We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion."

Then Justice Black rebuked the Maryland Court of Appeals for following the favorite Catholic line, although, of course, he did not mention the Catholic Church by name.

Fine Art of Evasion

All this may seem fearfully technical for non-lawyer readers, but the gist of it is very important for everybody interested in the separation of church and state. For nine years leading Catholic lawyers, aided and abetted by a few soft Protestant leaders, have been

trying to convince Congress and the public that the Supreme Court did not really mean what it said in 1947: "No tax in any amount, large or small, can be levied to support any religious activities or institutions." This worked in the Maryland courts because of the fear of Catholic political vengeance against judges who might defend the Constitution without fear or favor. Now, as a result of one brave citizen's almost single handed challenge to Maryland's relic of the Inquisition, the rights of individual conscience and the wall of separation between church and state have both been immeasurably strengthened in the hour of greatest need.

Incidentally, Justice Black very neatly turned the tables on any potential Catholic critics of his decision by pointing out that George Calvert, Catholic and first Lord Baltimore, one of Maryland's founders, had established the colony originally partly in order to create a land "securely beyond the reach of [Protestant] oaths." The *Torcaso* decision has won near unanimous support in daily newspaper editorials, and even the Catholic lay journal, *The Commonweal*, hailed the Supreme Court's decision as sound.

If there is any general moral to be drawn from the *Torcaso* case, it might be this. Religious liberty in a nation is as real as the liberty of its least popular religious minority. Look not to the size of cathedrals or even to the words on the statute books for proof of the reality of religious freedom. Ask what is the fate of the Protestant in Spain, the Jew in Saudi Arabia, the Arab in Israel, the Catholic in Poland, or the atheist in the United States.

Baptists and Methodists Reject Federal Aid

Comprehensive recommendations urging outright rejection of various forms of Federal aid to Baptist institutions have been presented to the Executive Board of the Texas Baptist Convention. A similar position was advocated by Dr. E. S. James, widely known editor of the *Texas Baptist Standard* in an address to the Southern Baptist Convention in St. Louis last Spring.

The recommendations were part of a report prepared by a convention committee under the chairmanship of Dr. Harold G. Basden of Dallas. They urged rejection of loans for construction of buildings for church schools, colleges, hospitals or other church institutions. Baptist

agencies were asked to reject government surplus, whether real estate or equipment unless market value was paid in exchange.

* * *

\$333,000 in Federal funds to construct a nursing home tempted, but did not trap, the Baltimore Conference of the Methodist Church. At its annual session in June the delegates decisively overrode the recommendation of their own committee and re-asserted the conference's devotion to the principle of church-state separation.

The committee itself had been tortured by doubt and division and this was reflected during the debate in

the conference. Rev. Donald D. Lewis suggested that conference delegates would be ashamed to return and face their people if they rejected the government money. "I think we will make a sad mistake," he said, "if we turn down this help which is only a means of charity."

Others felt that to decline the funds would be a mark of pride and conviction. Acceptance of such funds is "playing expediency over principle," said layman D. Stewart Patterson. "The statement has been made that there are no Government controls," he added. "At some time and at some place we know there are strings attached and we will be told so."



The Kentucky Court of Appeals, through a ruling by Commissioner Robert K. Cullen in effect approved the leasing of a new hospital to the Benedictine Sisters of Covington under which the Sisters will operate the hospital for 20 years. A citizens group represented by Jesse Lewis and John C. Anggelis, argued that the city and county had no power to give public property to a religious organization, but the contention was over-ruled.

Solid Catholic opposition plus tax conservatism caused the defeat of bonds for a new school in the Maquoketa Valley School District in Iowa. The bonds received a majority in three different elections but fell short of the required 60%.

Out of 23 Michigan school district elections, mostly in the southeast, the voters in thirteen instances defeated proposals to approve bond issues or to increase or extend extra millage for public schools.

In Lincoln, R. I., voters defeated bonds to construct a new high school. Another issue to expand the water department was approved. The *Pawtucket Times* blamed defeat of the school bonds on "strong clerical opposition." The St. James (Roman Catholic) parish bulletin strongly urged "No" votes.

The House Committee on Education and Labor has adopted an amendment to the NDEA Act which bars fellowship grants for religious studies and personnel. The amendment had been strongly urged by POAU.

Pavement of church parking lots and church school playgrounds at public expense has been challenged by three tax payers in West Allis, Wis., a suburb of Milwaukee. The plaintiffs complained that the practice was in violation of state law.

Legality of a "non-sectarian prayer" recommended by the New York Board of Regents for recitation in public schools was upheld by the Court of Appeals in a 5 to 2 decision. The court denied that the prayer involved state sponsorship of religion.

Mrs. Willie Mays has sued the famous ball player for separate maintenance. She took this action, she said, because her church, the Roman Catholic, has a rule against divorce. Reporters were puzzled because Mrs. Mays had been divorced twice previously. They speculated that perhaps the previous marriages had been adjudged "invalid" under Catholic rules.

On the basis of a complaint filed by POAU attorneys, Sacred Heart Church, Suffern, N. Y. was adjudged after investigation by the Post Office Department to be conducting a lottery as defined by statute 18 U.S. Code 1302. The church has been ordered to desist from using the U.S. mails to advertise its lottery.

The New York State Council of Churches has voiced opposition to a proposed constitutional amendment which would permit that state to guarantee loans for church schools.

Temporary use of public school buildings for religious services is unconstitutional in Wisconsin, according to opinion given in June by Attorney-General John Reynolds. The opinion was given in regard to a bill being considered in the Assembly which would have permitted

such use.

Public Law 87-35 approved by both Houses and signed by President Kennedy conveys without charge to the Roman Catholic Diocese of San Diego .72 acre of government land for educational purposes. When POAU raised a question as to a possible violation of the First Amendment Rep. Wayne N. Aspinall (D., Colo.) chairman of the Committee on Interior and Insular Affairs, replied: "The questions raised in your letter were carefully considered . . . during our hearings."

A Denver man, Gerri von Frellick, is trying to organize a "Union of Christian Citizens" political party. He asserts the Union's aims would be to see to it that political candidates are, first of all, "avowed professed Christians," and "to rally the people on moral issues."

"We plan to put a paid staff in every Congressional district in the country," he said at a church meeting in Amarillo, Texas.

Brotherhood Note

I hate to be an old spoilsport in this cozy world of togetherness so carefully put together here in the United States, with Brotherhood Week, common baccalaureate exercises, interdenominational cemetery services on Armistice and Decoration Day, and all the rest of it; but there is only one true Church, the one founded by Jesus Christ Himself, and it is known in the present day as the Roman Catholic Church. . . . Isaac Hacker was only acting under God's command when he founded the Paulist Congregation to "Make America Catholic," for God wants these United States one day as solidly Catholic as Ireland or France. . . .

—Fr. Richard Ginder,
Our Sunday Visitor,
Nov. 22, 1959

Supreme Court Affirms Mill Creek Decision

The Supreme Court of Missouri has affirmed the decision of Judge Robert L. Aronson in St. Louis denying to three tax-payers an injunction against transfer of a tract of land to St. Louis University, a Jesuit institution, from a re-development area opposite its campus.

The plaintiffs, Peter Kinsell et al, asked that the transfer be enjoined because the university's tract had been set aside without any competitive bidding. Also, the price of the tract was far below the value of the land and represented a subsidy to a sectarian institution in violation of the Missouri Constitution and the First Amendment to the Federal Constitution.

There was direct conflict in testimony and documents relating to the procedures followed in the transfer of the land to St. Louis University. Judge Aronson had found in favor of the city of St. Louis and the Land Redevelopment Agency and the others involved in practically all instances. The Supreme Court of Missouri affirmed this finding though it did use a peculiar phrase in its decision. The court said: "Our conclusion is that (the Trial Court's) findings are not clearly erroneous but instead are properly based on credibility of witnesses and are supported by substan-

Court Defers Begley Ante-Nuptial Ruling

Three minor children of Mrs. Ruth Begley may remain with their mother and continue their Protestant upbringing, despite the mother's ante-nuptial agreement to bring them up Catholic—so ruled the New York Appellate Division in June. The decision marked a reversal of a lower court which, on the basis of the Catholic ante-nuptial agreement, had ordered the children taken from their Baptist mother's custody and turned over to the Catholic father.

The decision in the lower court by Justice Charles J. Beckinella, a Roman Catholic, had had the effect of giving status as a contract binding in law to the Roman Catholic ultimatum forced upon Protestants as the price of a mixed marriage before a Catholic priest.

The Appellate Court did not specifically deal with the legal status of the Catholic agreement. It based its reversal solely on the welfare of the children. The court said that enforceability of the pre-nuptial agreement "may be presented at a later time when the children shall have . . . reached an age which makes them less dependent upon mother care. . . ."

tial evidence . . ."

A decision as to whether to appeal to the United States Supreme Court was to be announced shortly.



How Well Do You Remember?

1. There are 37 boys in our room. Each boy says the Rosary every day. How many do we say in 20 days?
2. Each time we say the Rosary we say 33 Hail Marys. If 40 fourth grade girls say the Rosary, how many Hail Marys do they say?
3. There are 240 girls and 274 boys in our school. If $\frac{1}{4}$ of them say the Rosary in their homes, how many say the Rosary?
4. During one week in October many people came to church to say the Rosary. On Monday 350 people came, on Tuesday 450, on Wednesday 425, on Thursday 480, and on Friday 500. What was the average daily attendance?
5. In the Holy Name school, 135 children say the Rosary at home every night. In the Holy Child school there are 4 times that many children who say the Rosary. How many children in both schools say the Rosary every night?

[131]

Above is a photographic reproduction of page 131 of *Progress in Arithmetic Grade 4*, by Sister M. Paulita Campbell, I.H.M., a typical parochial school textbook published by William H. Sadlier, Inc., New York, 1957. Similar material is on other pages. Mathematics is one of the subjects for which Cardinal Spellman proposes public subsidies.

Denver Teacher Is Fired

Louis F. Weipert, a teacher in Cathedral High School (Roman Catholic) in Denver, wrote a letter to *The Denver Post* arguing against Federal aid to parochial schools. He was promptly fired for daring to oppose the prescribed line of the bishops. We reprint below Mr. Weipert's second letter to *The Post* (June 21) which explains the disaster that befell him for speaking his mind:

I am writing because I believe you might be interested in a follow-up on a letter-to-the-editor that you published on the 18th of March.

I wrote in criticism of the Catholic Church's approach and aim in the problem of federal aid to education. If you happen to recall, I said I was a teacher in the Denver Parochial Schools (Cathedral High School, to be exact) and would rather see my clergy occupy themselves with economic and administrative reorganization than attempts to bulldoze federal funds.

I realized I would be stepping on some toes close to home, but I felt that a bit of honest controversy might help clear the air. I assumed, of course, no reprisals would be taken as a result of signing my name. I was mistaken.

On the 16th of March, I was called into the principal's office, and told the superintendent would offer me "\$. . ." for next year. This was a substantial increase, but I said I wanted to consider a bit, and would answer her as soon as she returned from a North Central meeting in Detroit.

The letter was published two days later, on March 18.

I received a call at about two in the afternoon on the 18th from the Superintendent of Cathedral, which boiled down to a general review of my inaccuracies and mistaken notions. I thought that there might be more, so I went to see the principal upon her return to Denver.

I asked if the offer of the 16th still held, and she said it would be better all around if it did not, so that the suspicion of "disloyalty" could be removed. I asked if the administration thought I was treasonous, and she affirmed

that was the general idea. I let it go at that, left, and called it a day.

The next day, having grown a bit peeved at what I considered arbitrary action, I had my attorney call the Archdiocesan Superintendent and ask what his opinion was. He told my attorney: 1. He wouldn't be bothered, 2. I hadn't been made any offer of employment, 3. It had been decided two months before not to renew my contract, and thus, 4. That was all there was to it. I might note parenthetically, that it had been just exactly two months since I had spoken to the superintendent about my union (American Federation of Teachers) activities and had received his full approval of unions and especially teacher unions.

I went to see the principal the next day and asked for assurances that I would be given good recommendations in the course of future inquiry. She assured me that she had and would continue to give me excellent references, because my work had been excellent.

We then got down to the serious business of whether or not I had been fired. She said I had been impetuous in having my attorney enter the case, because "no contracts have been offered." I asked if I might then be re-employed after all, but she said she was not in a position to say, I would just have to wait and see. I observed this was an exercise in semantics. She said, "It is just that and that is the way it is going to be." And so it has been, right up to the present day, two weeks after school has been dismissed. . . .

What all this boils down to, perhaps, is that I was right in writing. If the Church is so ten-

Bus Controversies

In Wisconsin a proposal in the Assembly (588A) to provide public funds for transportation to parochial schools was referred for a ruling on constitutionality to the state's Attorney General. The delay may kill it for this term. The measure had been strongly opposed by the Wisconsin Council of Churches.

In Pennsylvania House Bill 1461 for the same purpose was referred to the Appropriations Committee. Strongly opposed by the Pennsylvania and Pittsburgh Councils of Churches, by Methodist Bishop Fred Pierce Corson and by POAU chapters and committees, chances of emergence and passage appeared to be small. Resistance groups were favored by a budget weakness and by strong provisions in the Pennsylvania Constitution.

The Maine Citizens for Public Schools Committee was organizing the state in an effort to secure the necessary 42,000 signatures to place the parochial school bus bill on the ballot for a fall referendum. The act enabling local communities to provide such service at public expense was squeezed through the Legislature by a close vote.

der, surely it is because they know their position is not justified on federal aid.

I still feel a federal loan would be the worst possible thing for the simple reason much of it would be wasted. At a recent meeting of a council of Knights of Columbus, the Archdiocesan Superintendent admitted that the schools could save a full

"third" of their operating expenses if they put common purchase, etc., into effect.

This is all I recommended. This they admit would help. I am still without a job because I said so, and signed my name. Any suggestions?

LOUIS F. WEIPERT
Denver.

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